IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2007

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THE HONOURABLE MR JUSTICE K. RAVIRAJA PANDIAN

WRIT PETITION NOs.2570,2574,2579 and 2647 of 2006
(O.P.No.1625,1627,1626 and 1628 of 2003)

Tvl.Roll Well Bearing
139, Angappa Naicken Street,
Chennai-1. ...Petitioner in all W.Ps

Vs.

1.The Commercial Taxes Officer
Harbour III Assessment Circle,
3, Doss India Tower,
II Line Beach, Chennai 600 001.

2. The Special Commissioner and
Commissioner of Commercial Taxes
Ezhilagam,Chepauk,
Chennai 600 005.

3. The State of Tamil Nadu,
represented by the
Secretary to Government
Department of Commercial Taxes
and Religious Endowments,
Fort St.George,
Chennai 600 009. ...Respondents in -do-

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of Certiorari as stated therein on being transferred to this Court on the abolition of the Tamil Nadu Taxation Special Tribunal and numbered as writ petitions.

For Petitioner : Mr. S.Ramanathan
For Respondents : Mr. Haja Nazirudeen
Special Government Pleader(Taxes)

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O R D E R

The prayer in the writ petitions is to call for the records on the files of the first respondent herein in his proceedings TNGST Nos.207-1998-1999, 207/2000-2001, 207/1999-2000 dated 30.9.2003 and 0000207/2001-2002 dated 10.10.2003 and to set aside the same in so far as it relates to the turnover covered under Form XVII declaration issued by the buyers in respect of the sales of Rolling Bearing and corresponding levy of penalty under Section 12(3)(b) of the TNGSt Act.

2. The petitioners in W.P.Nos.2570,2574 an 2579 of 2006 put in issue the assessment orders dated 30.9.2003 for the assessment year 1998-1999, 2000-2001, 1999-2000 and the petitioner in W.P.No.2647 of 2006 put in issue the assessment dated 10.10.2003 for the assessment year 2001-2002 .

3. The assessment order is an appealable order. The assessee has an equally efficacious and alternative remedy by way of appeal to the authority prescribed under section 31 of the Tamilnadu General Sales Tax Act, and a second appeal to the Tribunal under section 36 of the Act.

4. The entrustment of the power to assess was not in dispute, and the authority within the limits of his power was a Tribunal of exclusive jurisdiction. The challenge was only to the regularity of the proceedings before the Sales Tax Officer as also his authority to treat the gross turnover returned by the petitioners to be the taxable turnover. Investment of authority to tax involves authority to tax transactions which in exercise of his authority the Taxing officer regards as taxable and not merely authority to tax only those transactions which are, on a true view of the facts and the law, taxable.

5. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226. The Act provides for an adequate safeguard against an arbitrary or unjust assessment. The assessee had a right to prefer an appeal under the Act subject to their payment of admitted amount of tax as enjoined by the proviso to section 31 of the Act and as regards, the disputed amount of tax, they had a remedy of applying for stay of recovery during the pendency of the appeal under the said provision (See Titaghur Paper Mills Co. Ltd. v. State of Orissa, 53 STC 315).

6. However,the learned counsel for the petitioner apprehends that assessment has been made on the assessee based on the general clarification issued by the sole act of the Commissioner and the appellate authority may be permitted to consider the issue independently on the clarification as per the material available before him and produced by the petitioner and also the legal arguments advanced by the petitioner . There may not be any explanation to the request made by the learned counsel for

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the petitioner. Each case has to be considered and order to be passed on its own merit. If any authorities or decisions are produced, that has to be taken into consideration.

7. Mr.Ramanathan, learned counsel for the petitioner also advanced his arguments that in case, the appellate authority is of the view that the petitioner is not entitled to the reduced rate of tax under Section 3 (3) of the TNGST Act, action could be taken only against the purchasing dealer and not on the selling dealer, the petitioner herein, if there is infraction of Form XVII declaration, the argument is apparently a hypothetical one, as there is a judgment of this Court to that effect that the appellate authority is directed to consider the judgment also, if it is referred, and pass appropriate orders.

8. In the light of what is stated above, this Court is of the view that the petitioner ought to have pursued his appellate remedy instead of filing the OPs before the Tribunal, which are now numbered as these writ petitions. However, as the petitioner in these cases have been bona fidely agitating the matter before the Tribunal from 2003 and on abolition of the Tribunal before this court since 2006, this court is of the view that in order to sub-serve the ends of justice, one more opportunity has to be given to the petitioner to pursue the appellate remedy. Accordingly, the petitioner is permitted to file an appeal before the appellate authority, if so advised and two weeks' time is granted for filing such an appeal against the orders of assessment, from the date of receipt of a copy of this order. The appellate authority shall entertain the appeal, if filed within the time given by this Court in this order.

9. With this observation, the writ petitions are disposed of. No costs.

Vjy

Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

To

1.The Commercial Taxes Officer
Harbour III Assessment Circle,
3, Doss India Tower,
II Line Beach, Chennai 600 001.

2. The Special Commissioner and
Commissioner of Commercial Taxes
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3. The Secretary to Government
Department of Commercial Taxes
and Religious Endowments,
Fort St.George,
Chennai 600 009.

+ One cc to Mr. S. Ramanathan Advocate SR 1277
+ 4 CC to Special Govt Pelader (Taxes) Advocate SR 12841 to 12844

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W.P.NOS.2570,2574,2579
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